IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

R.S.A. No.1674 of 2005 (O&M)
Date of Decision : 01.11.2007

Bal Kishan & Ors.

.....Appellants

Versus

Ramesh

.....Respondent

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. Bijender Dhankar, advocate
for the appellants.

Mr. Deepak Dahiya, Advocate
for the respondent.

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VINOD K. SHARMA, J. (ORAL)

This regular second appeal has been filed against the judgment and decree passed by the learned lower appellate Court vide which suit filed by the plaintiff respondent for permanent injunction was decreed to the effect that he was in possession of the disputed plot shown by letters "DSRX" as shown in the site plan Ex. "CX".However, the claim of the plaintiff respondent to seek injunction as per his site plan was declined.

The plaintiff had brought a suit for permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiff over the plot in dispute. The suit was contested by the defendants primarily on the ground that in pursuance to the resolution Ex.D1 passed by the Gram Panchayat an area of land measuring approximately 200 Sq. yards was given to the defendants and the plaintiff had no right or title in the same.

The learned trial Court on the basis of evidence brought on record held that the plaintiff respondent failed to prove that he was owner in possession of the plot marked by letters ABCD as shown in the site plan. It was also held that the defendants were owners in possession of the plot in dispute in pursuance to the resolution passed by the Gram Panchayat and consequently dismissed the suit.

Before the learned lower appellate Court a statement was made by the parties that the Local Commissioner be appointed to visit the spot and find out if the plot in dispute has any construction. Statement was also made by the learned counsel appearing on behalf of the defendant appellants that in case no construction is found on the plot, the same would be handed over to the plaintiff, whereas the plaintiff had also undertaken that he would give up his claim on the basis of the report of the Local Commissioner. With the consent of the parties, Local Commissioner was appointed, who visited the spot and demarcated the property. The report of the Local Commissioner showed that the plot allotted to the defendant appellants was 200 Sq. yards on which they had already raised construction. It was also found that there was well by the side of this house and the plot in dispute measuring about 90 Sq. yards was located between the well and the house belonging to the appellant. In view of the report of the Local Commissioner, the learned lower appellate Court on appreciation of evidence led by the parties, recorded a finding of fact that the defendant appellants are already in possession of the plot allotted to them in pursuance to the resolution of the Gram Panchayat Ex.D1 and that they had already constructed the house on the said plot. The constructed area was 190 sq. yard i.e. as per claim of defendants appellant. The learned lower appellate Court also came to the

conclusion that the respondent plaintiff was only entitled to the area which was marked DSRX. Thus, it would be seen that the learned lower appellate Court adjudicated the matter on appreciation of evidence as recorded. The respondent was found in possession of plot measuring 90 Sq. yards whereas the defendant appellants were in possession of constructed area under their possession, which was allotted to them. In view of this, the findings of the learned trial Court on issues No. 1 & 7 were reversed and consequently suit filed by the plaintiff respondent was ordered to be decreed, as per the site plan prepared by the Local Commissioner, who was appointed with the consent of the parties.

The learned learned counsel for the appellants contended that the findings of the learned lower appellate Court cannot be sustained as the plaintiff has failed to prove his ownership over the plot in dispute, therefore, was not entitled to injunction. This plea is not available to the defendant appellants in view of the positive statement made in the Court that in case no construction is found raised they would withdraw their claim.

The contention of the learned counsel for the appellants that the said statement would not be binding on the defendants, is also of no consequence as the learned Courts below have recorded a finding that the plot allotted to the defendant respondents vide resolution Ex.D1 is in possession of the appellant defendants, who have constructed the houses thereon. This concurrent finding of fact is not open to challenge in the regular second appeal. The finding arrived at on appreciation of evidence cannot be challenged on the plea of re-appreciation of evidence by this Court.

Consequently, I find no question of law muchless substantial question of law for consideration in this appeal by this Court.

No merit.

Dismissed.

01.11.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**